



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1991

Mr. Fred Toler
Executive Director
Texas Commission on Law Enforcement
Officer Standards and Education
1033 La Posada, Suite 240
Austin, Texas 78752

OR91-644

Dear Mr. Toler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13167.

Your agency has received a request for information relating to training programs approved by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), among other things. In particular, the requestor seeks all "documents, correspondence and reports related to the Law Enforcement Training Network ["LETN"], including documentation regarding its approval as a training program and its lesson plans." In response to the request, your agency has forwarded to us for review sample copies of the tests prepared for the participants in training provided by LETN. We thus address in this opinion only the applicability of the Open Records Act to those documents, and presume that you have released or will release to the requestor other documents in your possession that are responsive to his request.

Pursuant to section 7(c) of the act, we have notified the third party whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from LETN. LETN claims that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(4), 3(a)(8), and 3(a)(10) of the Open Records Act.

We have considered the exceptions LETN has claimed and have examined the documents submitted to us for review. Previous open records decisions issued by this office resolve this request. Section 3(a)(10) excepts from required public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In making trade secret determinations under section 3(a)(10), this office will accept a claim as valid if the claimant establishes a *prima facie* case for its assertion of trade secrets that is unrebutted *as a matter of law*. Open Records Decision No. 552 (1990) at 5. Whether a claimant makes a *prima facie* case depends on whether its arguments, as a whole, correspond to the criteria for trade secrets detailed in the Restatement of Torts and adopted by the Texas courts. *Id.* at 2-3. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the proprietor's] business;
- (2) the extent to which it is known by employees and others involved in [the proprietor's] business;
- (3) the extent of measures taken by [the proprietors] to guard the secrecy of the information;
- (4) the value of the information to [the proprietors] and to [their] competitors;
- (5) the amount of effort or money expended by [the proprietors] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939). These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. *See supra*, at 3.

LETN claims that great care is taken and expense incurred to protect the confidentiality of the information at issue here and advises us that LETN "expends

approximately \$1,200 per location where its programming [the requested information] is received (currently approximately 2,600 locations) to encrypt the television broadcast of its law enforcement training." LETN has also demonstrated that release of this information would damage its competitive position. We conclude that LETN has made the requisite *prima facie* case for the information at issue here. Accordingly, we conclude that that information may be excepted from required public disclosure by section 3(a)(10) of the Open Records Act. Because we resolve this matter under section 3(a)(10), we need not address the applicability of sections 3(a)(1), 3(a)(4), and 3(a)(8) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-644.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Ref.: D#s 13167, 13694

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